UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF OKLAHOMA

STATE OF OKLAHOMA, ex rel. W.A. DREW EDMONDSON, in his capacity as ATTORNEY GENERAL OF THE STATE OF OKLAHOMA and OKLAHOMA SECRETARY OF THE ENVIRONMENT C. MILES TROBERT, in his capacity as the TRUSTEE FOR NATURAL RESOURCES FOR THE STATE OF OKLAHOMA, Plaintiff(s), vs. TYSON FOODS, INC., INC., TYSON POULTRY, INC., TYSON CHICKEN, INC., COBB-VANTRESS, INC., AVIAGEN, INC., CAL-MAINE FOODS, INC., CAL-MAINE FARMS, INC., CARGILL, INC., CARGILL TURKEY PRODUCTION, LLC, GEORGE'S, INC., GEORGE'S FARMS, INC., PETERSON FARMS, INC., SIMMONS FOODS, INC., and WILLOW BROOK FOODS, INC., Defendant(s).	)	Case No. 05-CV-329-TCK-SAJ

ORDER

Currently before the Court are the motions by Defendants Cargill, Inc. & Cargill Turkey Production, L.L.C. to compel [Docket No. 902], and the motion by the Plaintiffs for a protective order. [Docket No. 911].[1/] Defendants maintain that they are within the limit of 25 interrogatories. If the Court concludes that Defendants have exceeded the interrogatory limit, Defendants request that the Court grant permission for Defendants to

[1/] The Court notes that Plaintiffs filed a response in opposition to Defendants' motion [Doc. No. 912] which is a near duplicate (with a few deletions) of the Plaintiffs' motion for a protective order [Docket No. 911]. Rather than file duplicate motions, the Court again encourages the parties to file a pleading which adopts and incorporates the arguments from a prior brief, or requests relief "for the reasons articulated in" an already filed brief.

serve a number in excess of the 25 limit. Plaintiffs contend that the interrogatories (including sub-parts) propounded by Cargill number in excess of 90 interrogatories, and that the interrogatories served by Cargill Turkey number at least 74 and possibly as many as 138.

Fed. R. Civ. Proc. 33(a) provides that "without leave of court or written stipulation, any party may serve upon any other party written interrogatories, not exceeding 25 in number including all discrete subparts. . . ." Fed. R. Civ. Proc. 33(a). The comments to the rule provide that "[p]arties cannot evade this presumptive limitation through the device of joining as 'subparts' questions that seek information about discrete separate subjects. However, a question asking about communications of a particular type should be treated as a single interrogatory even though it requests that the time, place, persons present, and contents be stated separately for each such communication. As with the number of depositions authorized by Rule 30, leave to serve additional interrogatories is to be allowed when consistent with Rule 26(b)(2). The aim is not to prevent needed discovery, but to provide judicial scrutiny before parties make potentially excessive use of this discovery device. In many cases it will be appropriate for the court to permit a larger number of interrogatories in the scheduling order entered under Rule 16(b)." *See* Comments, 1993 Amendments, Fed. R. Civ. Proc. 33. The local rules for the Northern District of Oklahoma provide that "Each answer to an interrogatory shall be immediately preceded by the interrogatory being answered. Interrogatories inquiring as to the existence, location and custodian of documents or physical evidence shall each be construed as one interrogatory. All other interrogatories, including subdivisions of one numbered interrogatory, shall be construed as separate interrogatories." *See* LCvR33.1.

The Court appreciates the sentiment of the Court in *Ginn v. Gemini*, 137 F.R.D. 320, 322 (D. Nev. 1991). "Legitimate discovery efforts should not have to depend upon linguistic acrobatics, nor should they sap the court's limited resources in order to resolve hypertechnical disputes." *Id*.

The Court has reviewed the discovery interrogatories of Defendants. Some of the interrogatories could be construed as including more than one interrogatory. However, the Court is not persuaded that the overall number of interrogatories is excessive. Further, considering the complexity of this action, the number of submitted discovery requests is reasonable. "The aim is not to prevent needed discovery, but to provide judicial scrutiny before parties make potentially excessive use of this discovery device." *See* Comment, Fed. R. Civ. Proc. 33. The Court has therefore reviewed the proposed discovery to provide "judicial scrutiny" and concludes that the number of interrogatories is not excessive given the nature of this action.[2/]

The Court declines to piecemeal each interrogatory to determine whether or not Defendants have remained within the limit of 25 interrogatories. The Court has reviewed the discovery and concluded it is reasonable. Therefore, whether the parties construe this as a grant of permission to serve additional interrogatories in excess of the permitted 25, or as a finding that the proposed interrogatories do not exceed the requisite 25, is of little consequence. The Court finds the proposed discovery reasonable and permissible.

[2/] The Court has not reviewed the substance of the interrogatories and makes no findings with regard to whether any interrogatories are reasonable or relevant. The sole scope of the Court's findings are that the number of interrogatories is permissible.

By declining to dissect the interrogatories, the Court is cognizant of the fact that the parties will remain uncertain as to whether service of additional interrogatories is permitted. Based upon the review of this case and the currently submitted interrogatories, the Court concludes that Defendants may serve an additional five interrogatories without first seeking permission of the Court. Defendants should seek Court permission if Defendants want to serve more than an additional five interrogatories.

The Court recognizes that Plaintiffs did not respond to any of the interrogatories because Plaintiffs believed a response could be construed as a waiver of the right to object. From this date forward, to facilitate the discovery process, all parties are ordered to substantively respond to discovery requests while simultaneously filing a motion for a protective order that objects solely on the basis of the number of interrogatories served. A party responding that is objecting to the number of interrogatories should answer the first 25 interrogatories, with the determination as to what constitutes the first 25 interrogatories made by the responding party. By providing substantive responses, the discovery process should proceed more smoothly and quickly.[3/]

It is so Ordered, this 24th day of October 2006.

Sam A. Joyner
United States Magistrate Judge

[3/] Plaintiffs, for example, in a footnote in their reply brief note that Plaintiffs have substantive objections to some interrogatories. If Plaintiffs had responded to the discovery requests and made the substantive objections, issues related to those objections could already be fully briefed.